

HOUSE BILL 3740
By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Section 9-21-151; Section 9-9-113; Section 12-4-106 and Section 12-4-107, relative to public finance

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 9-21-151, is amended by deleting the existing section and substituting instead the following:

(a) In addition to the definitions applicable generally to this chapter 21, the following definitions shall be applicable to this section only:

(1) 'Advisor' means a financial advisor, swap advisor, or program administrator, with respect to a financial transaction, whether or not such title is used;

(2) 'Costs' related to a finance transaction may include, but are not limited to, fees and expenses of advisors, underwriters, placement agents, counterparties, bond and other counsel, paying agents, registrars, trustees, escrow agents, verification agents, credit enhancement and liquidity providers, remarketing and auction agents, rating agencies, printing and advertising, and other similar fees and expenses, whether or not payable at issuance. "Cost" may include recurring and nonrecurring fees and expenses occurring during the life of the transaction, debt service payments (including interest), and any payments made to a counterparty;

(3) 'Debt obligation' means bonds, notes, capital leases, loan agreements, and any other evidence of indebtedness lawfully issued, executed or assumed by a public entity;

(4) 'Derivative' means an interest rate agreement, as defined in Section 9-22-103, and such other transactions related to debt obligations as identified by the state funding board;

(5) 'Finance transaction' means debt obligations, derivatives, or both;

(6) 'Public entity' means the state, a state agency, a local government, or a local government instrumentality;

(7) 'Public finance professional' means an advisor, underwriter, placement agent, counterparty, bond counsel, issuer's counsel, or other person or entity advising the public entity with respect to a finance transaction or offering to provide professional services with respect to such transaction; and

(8) 'State funding board' means the state funding board, created pursuant to chapter 9 of this title.

(b) The state funding board, after consultation with public entities and public finance professionals, shall adopt policy, procedures, and forms to be used for filings required by this section. The state funding board is authorized to exempt from the filing requirements of this section any finance transaction:

(1) Deemed de minimus by the board;

(2) Where the public entity is required by statute to participate in the financing program;

(3) That is a conduit transaction for a non-governmental entity; or

(4) The disclosure of costs of which transaction are deemed not consistent with the public disclosure intent of this section.

(c)

(1)

(A) The state funding board shall establish guidelines and model debt and derivatives policies for use by public entities. These guidelines and model policies may address at a minimum:

(1) types of debt permissible, including the requirements for interfund borrowing;

(2) debt limits;

(3) use of derivatives;

(4) debt structuring practices;

(5) debt issuance practices including selection and utilization of public finance professionals; and

(6) debt management practices.

(B) Public entities intending to use public finance professionals in connection with finance transactions shall procure their services through the a request for proposal procedure unless they have adopted debt and derivative policies at least meeting the minimum requirements of the model debt and derivative policies established by the state funding board.

All contracts for such services must be in writing. Notice of adoption by the public entity's governing body of the debt and derivatives policies shall be filed with the director of local finance. Until such notice has been filed, the public entity must follow procedures for the selection of public finance professionals contained in subsection (c)(1)(C).

(C) A request for proposals prepared by the public entity shall be spread upon the minutes of a meeting of the governing body and be made a public record of the public entity. The public entity shall file notice of the request for proposal with the director of local finance. The request for proposal shall specify the criteria upon which selection shall be made, which shall include at least the following criteria:

- (a) qualifications, experience, and management capability of the firm;
- (b) qualifications, experience, and availability of the individuals assigned to the finance transaction;
- (c) methodology and approach to the financing transaction;
- (d) proposed fee arrangements;
- (e) interview and reference checks; and
- (f) disclosure of conflicts of interest such as fee-splitting, joint accounts, and financial interest in other parties to the transaction.

Public advertisement shall be given at least thirty (30) days in advance of the deadline for submission of request for proposals. Submission of a proposal shall not create rights, interests, or claims of entitlement in any proposer, including the best evaluated proposer. The public entity shall respond to questions or requests for clarification from public financial professionals in writing or may hold a preselection conference with prospective public financial professionals to discuss provisions of the request for proposals or to answer questions to allow fair and uniform access to information.

(B) The award of such contract shall be made to a responsive and responsible public financial professional whose proposal is determined by the public entity to be the best taking into consideration the

relative importance of price and other evaluation factors set forth in the request for proposals.

(C) If provided in the request for proposals, the submitted proposals shall be opened so as to avoid disclosure of contents to competing proposers during the process of evaluation. However, all proposals that have been submitted shall be open for public inspection after the contract is awarded.

(d) Not later than forty-five (45) days following the issuance or execution of a finance transaction by or on behalf of any public entity, such public entity shall submit, or cause to be submitted, to the governing body of the public entity, with a copy to the director:

- (1) A brief description of the finance transaction;
- (2) The issuance, continuing and one-time costs of the finance transaction;
- (3) A copy of the information return filed with the federal IRS, if applicable;
- (4) A description of any continuing disclosure obligations with respect to the finance transaction;
- (5) A copy of the offering document, if any; and
- (6) Such other information as may be required by the state funding board.

(e)

(1) Upon discovery by the public entity of a failure to comply with the requirements of this section, the public entity may immediately request permission from the director to permit a late filing of such information. In addition, upon discovery by the director of non-compliance, the director shall notify the public entity of such noncompliance. The public entity shall submit the required information or a plan for compliance, along with an explanation for the noncompliance, within fifteen (15) days following its discovery or notice by the director.

(2) The director shall maintain a list of all finance transactions discovered as not complying with the requirements of this section, along with a description of the nature of the noncompliance. The director shall also maintain lists of all public entities that have failed to respond to the director's notification of non-

compliance. The lists of entities that have failed to comply with the requirements of this section shall be a public record. Upon receipt of the information required for any finance transaction for which such information is noncompliant (including subsequent adoption of debt and derivative policies), the director shall remove the public entity from the list and notify the public entity of its removal. If a public entity is on the director's list of public entities that have failed to comply with this section, no finance transactions may be issued by such public entity until the director has removed such public entity from the list.

SECTION 2. Subsections (b), (c), and (d) of Section 12-4-106 of the Tennessee Code Annotated are amended by deleting the existing subsections and substituting instead the following, and relettering the following subsection accordingly:

(b) Any contract for legal, fiscal agency, financial advisory or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation in connection with a finance transaction shall be awarded in accordance with Section 9-21-151 and shall be in writing, to be entered into prior to, upon or promptly after the inception of the relationship, specifying the services to be rendered, the costs therefor, and the expenses to be covered under such contract.

(c) Any fiscal agent, financial advisor or advisory services provider under contract with any county, city, metropolitan government, town, utility district or other municipal or public corporation of this state who desires to bid, directly or indirectly, on any bonds, notes or other obligations of such entity sold pursuant to public, competitive sale shall receive in writing prior to the sale the permission of such entity to bid either directly or indirectly on the obligations.

SECTION 3. Tennessee Code Annotated, Section 12-4-107, is amended by deleting the existing section.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. For purposes of the state funding board adopting policy, procedures, models and forms, this act shall be effective upon the act becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2007, the public welfare requiring it.